REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 1070 OF 2007**

% **Date of Decision** : 7th September, 2007.

ABDUL QADAR .... Appellant.
Through Mr. Apurb Lal, Advocate.

VERSUS

SLUM & J.J. DEPARTMENT (MCD) & ANOTHER .... Respondents.
Through Mr. O.P. Saxena, Advocate.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? YES.

3. Whether the judgment should be reported in the Digest ? YES.

SANJIV KHANNA, J:

1. The appellant Mr. Abdul Qadar has challenged judgment dated 10th May, 2007 passed by the learned Single Judge dismissing his W.P. (C) No. 11988/2006. By the said writ petition, the appellant had prayed for setting aside order dated 15th June,

2006 passed by the Municipal Corporation of Delhi denying him allotment of alternative commercial plot.

2. Properties in Sarai Khalil, Delhi underwent demolition in 1975-76. Under a policy framed by the respondent-Municipal Corporation of Delhi, alternative residential/commercial space was allotted to persons whose properties were demolished. For this purpose, allotments were made on the basis of CID Survey Report.

3. As per the policy of the Municipal Corporation of Delhi, persons who were in occupation of area between 41-60 square metres, were allotted plots of 60 square meters and persons who were in occupation of area of 61-80 square metres, were allotted plots of 80 square metres. The CID Survey Report indicated that the appellant was in occupation of an area of 13”x6” as per serial No. 160 of CID Report, which was being used for commercial purpose. Similarly, at serial No. 161 of the CID Survey Report, it is recorded that the appellant was in occupation of three separate tin sheds each with an occupied area of 13”x22”, which were being used for

commercial-cum-residential purposes. On the basis of CID Survey Report in respect of serial Nos. 160 and 161, the appellant has been allotted two residential flats Nos. B-5/33-B and B-6/44 at Inderlok, as he had a large family consisting of 12 members. In addition, he has been allotted a commercial plot of 40 square metres bearing No. 393 at Shahzada Bagh. The appellant, admits that additionally another commercial plot of 40 square metres bearing No. 164, Phase II, Shahzada Bagh stands allotted to the appellant by the respondent Corporation vide it's letter dated 12th August, 2004 on payment of consideration of Rs.20,992/-. Thus, in all, the appellant has been allotted two residential flats and two commercial plots of 40 square metres each, totalling 80 square metres.

4. The appellant is, however, not satisfied. He claims further allotment should be made to him as he was also in occupation of property mentioned at CID Survey No. 159. As per the said Survey Report, the said property was in occupation of Mr. Abdul Wahab, the brother of the appellant. The said property was being used for

residential purpose. Mr. Abdul Wahab has been allotted residential flat bearing No. A-10/77-C, Inderlok on the basis of entry No. 159 in the Survey Report.

5. The principal and main basis of the claim of the appellant is based upon order dated 13th October, 2003, which was passed in W.P. (C) No. 4496/2001. A reading of the said order shows that the learned Judge had referred to the claim of the appellant that he was entitled to a plot of 120 square metres but had been allotted a commercial plot of 40 square metres and there was no reason available on record why the claim of the appellant was rejected. The learned Single Judge noticed that initially it appeared that the department had noted that the entitlement of the appellant was 120 square meters. In these circumstances, learned Single Judge directed as under:-

> "In my considered view, the Committee must examine the case of the Petitioner on merits and the policy making the alternative allotment shall be uniformly applied to all cases. The Petitioner cannot be prejudice by the mere pendency of the case for a longer period of

time and that cannot be a ground to reject the case of the petitioner."

6. The Municipal Corporation of Delhi examined the claim of the appellant again and has admittedly now made further allotment of commercial plot of 40 square metres in terms of their policy. In other words plots of 80 square meters have been alloted. While doing so, MCD has now given reasons and explained that as per the CID Survey Report at serial No. 159, it was specifically mentioned that the property mentioned therein was occupied by Mr. Abdul Wahab and was being used for residential purpose. On this basis, Mr. Abdul Wahab was allotted a separate property. The appellant therefore cannot claim allotment on basis of entry at serial No. 159 of the CID Survey Report. The Committee also noticed that the appellant had been allotted two residential flats and this allotment was made taking into consideration the residential component of 13"x22" and the exact commercial entitlement was worked out after excluding the residential entitlement, which had been granted to the appellant. CID

Survey Report has been acted upon and allotments have been made in terms thereof.

7. In view of the facts and circumstances stated above, we find no merit in the present appeal and the same is dismissed. No Costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 7, 2007.
VKR/P